

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

The City of New York, et al.

v.

Abbott Laboratories, Inc., et al.

)
) Judge Patti B. Saris
)
)
)
)

**FEBRUARY 2011 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for February 2011, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: February 2, 2011

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

KIRBY McINERNEY, LLP
825 Third Avenue
New York, New York 10022
(212) 371-6600

By: /s/ Joanne M. Cicala
Joanne M. Cicala

Ross B. Brooks, Esq.
MILBERG LLP
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300
Special Counsel for the County of Nassau

Theresa A. Vitello, Esq.
LEVY PHILLIPS &
KONIGSBERG, LLP
800 Third Avenue
New York, NY 10022
(212) 605-6205
Counsel for the County of Orange

**February 2011 Status Report on Behalf of the
City of New York and New York Counties**

Voluntary Dismissal of Claims

On December 13, 2010, the Court entered an order granting plaintiffs' voluntary dismissal of claims against defendants Forest Pharmaceuticals, Inc. and Forest Laboratories, Inc. *See* Docket No. 7332, Sub-Docket 268.

On December 29, 2010, the court entered an order granting plaintiffs' stipulation of dismissal of claims against defendants AstraZeneca Pharmaceuticals L.P., AstraZeneca L.P., and Zeneca Holdings, Inc. *See* Docket No. 7364, Sub-docket No. 271.

On January 28, 2011, plaintiffs filed a notice of voluntary dismissal of claims against defendants Johnson & Johnson Companies. *See* Docket No. 7390, Sub-docket 274.

Discovery

1. Motion to Quash & Motion to Seek Protective Order

On January 25, 2011 plaintiffs, on behalf of themselves and Dr. Thomas Fanning (hereinafter referred to as "movants"), filed a motion for protective order and a motion to quash the tardy January 10, 2011 subpoena issued by defendants to former New York State Department of Health ("NY DOH") employee Dr. Fanning. *See* Docket No. 7386, Sub-docket No. 272; Docket No. 7387, Sub-docket No. 273.

On January 27, 2011 defendants filed their Memorandum in opposition. *See* Docket No. 7389.

Movants presently will seek leave to file a reply memorandum in further support of their motion. The motion remains *sub-judice*.

2. Joint Motion To Extend Discovery Deadline

On December 17, 2010 plaintiffs and defendants filed a joint motion to extend the

deadlines to complete discovery. *See* Docket No. 7354, Sub-docket No. 269. The parties subsequently withdrew this motion. *See* Docket No. 7391, Sub-docket No. 275.

On January 31, 2011 plaintiffs and defendants filed a renewed joint motion to extend the time to complete discovery. *See* Docket No. 7393, Sub-docket 276. The motion seeks to modify the schedule as follows: (1) all fact discovery timely sought by defendants to be completed by February 18, 2011, (2) plaintiffs' expert depositions to be completed by March 17, 2011, (3) defendants' expert reports to be served by April 14, 2011, and (3) defendants' expert depositions to be completed by May 31, 2011. This motion remains *sub-judice*.

3. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191.

On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852, Sub-docket No. 197.

On June 21, 2010, the motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry. It remains *sub-judice*.

4. Motion to Compel Discovery from Defendant Merck

Plaintiffs and Merck have reached a settlement agreement in principle. Plaintiffs will withdraw their motion to compel [Docket No. 6487, Sub-docket No. 158].

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 2nd day of February, 2011, I caused a true and correct copy of the above February 2011 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: February 2, 2011

/s/ Kathryn B. Allen
Kathryn B. Allen
Kirby McInerney LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600